

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 732 of 1996

HON'BLE MR.JUSTICE J.M.PANCHAL

and

HON'BLE MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

MAGANBHAI SOBANBHAI RATHAVA

Versus

STATE OF GUJARAT

Appearance:

MR BS SUPEHIA for Petitioner No. 1
PUBLIC PROSECUTOR for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE J.M.PANCHAL
and
HON'BLE MR.JUSTICE M.C.PATEL

Date of decision: 24/11/2003

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE M.C.PATEL)

1. The appellant Maganbhai Sobhanbhai Rathva was the accused in Sessions Case No.52/1995 before the learned Additional Sessions Judge, Vadodara, Camp at Chhota-Udepur, who, by his judgement and order dated 23.8.1996, convicted the appellant of the offence punishable under section 302 IPC and sentenced him to life imprisonment and a fine of Rs.3000/-, in default, R.I. for two years.

2. The prosecution case is set out in the complaint which was lodged by Rathadiya Jangaliya Rathva (Exh.14) on 30.9.1994. About three years earlier, the complainant Rathadiya Rathva and his cousin's son Khuman Dalsing Rathva had taken the field of the appellant on mortgage for the sum of Rs.3000/-. No writing was executed, but since the relations were cordial, there was an oral condition that the land was to be given back when the money was repaid and till then they would cultivate the land and give half the share to the owner. During the current season, maize corn and Tuwar were sown and on 29.9.1994 maize corn was harvested and it was stacked near the boundary of the field. At night Rathadiya Rathva, Khuman Dalsing, Rangidiya - son of Gordhan Kanji and Puniya - son of Magan Shobha were sleeping in the field since maize corn was stored in the field. Rathadiya awoke at 5 O'clock in the morning on hearing a sudden noise and he saw the appellant armed with an iron "parai". The appellant asked him where Khuman was. The complainant told him that he was sleeping near him. The appellant raised the parai and saying that "why do you call me mad" gave 2 to 3 blows with the parai on the head of Khuman. The complainant raised shouts. Other people came running and the appellant was caught. Khuman was found dead. The appellant was tied with a rope to the electric pole. The complainant went to inform the Sarpanch Ranchhodbhai Hudabhai and thereafter he went to the police station at Kwant. A specific reason was given for the incident in the complaint. It was stated that during the previous year the appellant had lost his mental balance, but he had recovered after treatment. However, people used to tease him calling him mad. On the previous day also deceased Khuman and other children had teased him calling him mad. It was for this reason the appellant was alleged to have given the blow on the head of Khuman.

3. The charge framed by the learned Additional Sessions Judge specifically stated that while the

deceased Khuman was sleeping in the heap of maize corn in the field at village Kankanpur, the appellant came there at about 5 O' clock in the morning on 29.9.1994 since the deceased often teased him calling him mad. Even on 29.9.1994 also the deceased had called him mad and teased him and hence the appellant took it to heart and in a fit of rage, went to the place where the deceased was sleeping and gave blows on his head with "parai".

4. The evidence of Rathadiya Rathva (PW3-Exh.13) shows that while he, Khuman Dalsing, Rangudaya Gordhan and Puniya were sleeping near the heap of maize corn in the field, the appellant came there and he gave blows to Khuman. At that time Rathadiya Rathva awoke and asked the appellant why he was giving blows to Khuman. The appellant stated that he wanted to kill him. Rathadiya raised shouts. Chhaniyabhai and Ishwar Chhaniya also came there running. The appellant was caught and bound. However, when he was asked about the reason for the incident, he resiled from what he had stated in the complaint and said that he did not know what was the reason for the quarrel. In the cross-examination he denied that he has stated in the complaint that Khuman and other children used to tease the appellant calling him mad.

5. The evidence of Dr. Chimanbhai Chauhan (PW4-Exh.21), who performed the postmortem examination, shows that there was a CLW injury on the left temporal region and there was also a hematoma on left parietal region. On internal examination it was found that there was a fracture of the left temporal and left parietal bone. According to him, the cause of death was head injury. He also said that the injury could have been caused by the "parai" which was shown to him. According to him, the injury was sufficient to cause death in the ordinary course of nature.

6. The prosecution also examined Shaniyabhai Rathva (PW5-Exh.27) and Ishwarbhai Shaniyabhai Rathva (PW7-Exh.29) as prosecution witnesses. Both of them had arrived at the scene of offence on hearing the shouts and saw the appellant with a "parai" in his hands.

7. Rangudiyabhai Gordhanbhai (PW6-Exh.28), who, according to the prosecution, was also sleeping with the deceased in the field only said that on hearing the shouts of Rathidiya Rathva, he awoke, but he did not support the prosecution case that he has seen the incident.

8. The evidence of Rathadiya Rathva, the complainant, shows that it was the appellant who had given blows with the "parai" on the head of Khumanbhai which proved fatal. His evidence on this point has remained unshaken and there is no reason to disbelieve the same. Learned counsel for the appellant could not assail this part of the evidence. However, the question remains as to what offence the appellant can be said to have committed in the circumstances of the case. Learned counsel for the appellant submitted that the appellant gave the blows on sudden and grave provocation and his case would fall under exception 1 to section 300 and therefore his case would be covered by section 304 of IPC. It is true that the prosecution witnesses have not said anything about the teasing of the appellant by the deceased. But the charge as framed specifically alleged that the deceased had repeatedly teased him calling him mad and had done so even on the previous day. This allegation would bring the case under section 304, IPC. The accused cannot be worse off simply because the prosecution witness omitted to give evidence of the circumstances in which the appellant gave the blows. If the charge as framed had been fully proved, there is no doubt that the appellant's case would fall under exception (1) to section 300. Since the allegation of provocation was specifically made a part of the charge, in the facts and circumstances, we are of the opinion that the appellant cannot be said to have committed the offence under section 302, but his case would fall under exception 1 to section 300 and he shall be liable to be convicted under section 304, Part I, IPC.

9. As a result of the above discussion, the conviction of the appellant under section 302 of IPC recorded and sentence of life imprisonment and fine of Rs.3000/- in default R.I. for 2 years imposed by the learned Additional Sessions Judge, Baroda, Camp at Chhota-Udepur in Sessions Case No.52/95, is set aside, and, instead, the appellant is convicted of the offence under section 304, Part I, IPC and is sentenced to suffer R.I. for nine years. If the appellant has already undergone the sentence, he shall be set at liberty immediately, if he is not required in connection with any other case. The appeal is allowed to the aforesaid extent.

[J.M. PANCHAL, J.]

[M.C. PATEL, J.]

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